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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 398

VERN GEORGE DAVIDSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 107-108) on remand by this Court, 349 U. S. 918, is not yet reported. The previous opinion of the Court of Appeals is reported at 218 F. 2d 609.

JURISDICTION

The judgment of the Court of Appeals was entered on August 17, 1955 (R. 109). The petition for a writ of certiorari was filed on September 16, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner—who in selective service documents stated that his conscientious objection to war was the result of political beliefs as a socialist, and not of religious training and belief in a Supreme Being—made a claim under Section 6(j) of the Act so as to entitle him to the administrative appellate procedures of that section.

STATUTE INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is

found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, sub-

ject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

STATEMENT

The facts in this case are fully set out in the statement on pp. 3-9 of the government's prior brief in opposition, No. 644, O.T. 1954.[1] For present purposes, the significant facts are that petitioner, before his Selective Service Board, claimed the right to be classified as a conscientious objector, expressly stating, however, that his beliefs "are not religious, they are basically political" (F. 11). He stated that he did not believe in a Supreme Being; that his beliefs arose out of a "long education of socialist ideas"; and that he was not a member of a religious sect (F. 20, 21, 23). He said his

[1] The printed record filed in the instant case is the same as that filed in No. 644, O. T. 1954. The designation "F." refers to the selective service file which was Government Exhibit 1 and the numbers given are those in longhand at the bottom of the pages of that exhibit.

allegiance was not to any God or any country, but to humanity as a whole (F. 22).

He was classified as I-A by his local board. On appeal, he had a hearing before a Department of Justice hearing officer, and the Department recommended that he be classified I-A since his objections did not arise from religious training and belief (F. 35-41). That report was not sent to petitioner before he was classified I-A by the appeal board (F. 16).

Petitioner was subsequently deferred as a student. When that deferment ended, he was again classified I-A. He appealed, a second time and was again classified as I-A by the appeal board (F. 16).

He refused to submit for induction and was convicted for such refusal in the United States District Court for the Southern District of California. On appeal, his conviction was affirmed, the Court finding that petitioner had not been denied any procedural rights, 218 F. 2d 609 (C.A. 9).

While the petition for certiorari was pending, this Court decided *Gonzales* v. *United States,* 348 U. S. 407, holding that a registrant who presents a conscientious objector claim is entitled on appeal to receive a copy of the letter of recommendation from the Department of Justice to the appeal board, and to be given a reasonable opportunity to reply thereto. This Court granted the petition for certiorari (349 U.S. 918) and remanded the case to the Court of Appeals "for consideration of whether petitioner's conscientious objector claim

comes within the provisions of Sec. 6(j) of the Universal Military Training and Service Act, in which event this case would be governed by *Gonzales* v. *United States,* 348 U. S. 407" (R. 104).

The Court of Appeals held, "Complying with that order, we have considered whether appellant's conscientious objector claim comes within the provisions of §6(j) of the Universal Military Training and Service Act and have concluded that it does not." It again affirmed the district court's judgment (Pet. App. A, B; R. 107-109). The present petition for certiorari seeks review of the second affirmance of petitioner's conviction.

ARGUMENT

The only issue in this case is whether petitioner is entitled to the benefits of the procedures set forth in Section 6(j), although he himself disclaimed that he was conscientiously opposed to participation in war in any form "by reason of religious training and belief" as required by that statute. If he was within the statute, this Court has already ruled that the procedures actually accorded him did not meet the standard set forth in *Gonzales* v. *United States,* 348 U.S. 407. If he was not, then the Selective Service authorities, in according him the hearing which he did get, gave him more than was his due.

We believe that the court below was correct in holding that petitioner was not entitled to the special procedures established by Section 6(j). His own statements of his claim to be a conscientious objector fully and unambiguously demonstrated that his was not the type of claim to which Section

6(j) relates. The section, by its plain terms, relates to a person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." This is followed immediately by the statement that "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." There follows the provision that a person claiming exemption because of *"such conscientious objections"* can avail himself of the special appellate procedures provided in the statute.

Apart from the clear wording of the statute, the legislative history shows that Congress intended this result. Prior to the 1948 Act, there was no clause referring to belief in a Supreme Being and the Second Circuit had held that such a belief was not necessary for qualification as a conscientious objector. See *United States* v. *Kauten,* 133 F. 2d 703 (C.A. 2); *United States ex rel. Phillips* v. *Downer,* 135 F. 2d 521 (C.A. 2); *United States ex rel. Reel* v. *Badt,* 141 F. 2d 845 (C.A. 2(. Later *Berman* v. *United States,* 156 F. 2d 377 (C.A. 9), certiorari denied, 329 U.S. 795, took a contrary view in denying the conscientious objector exemption to a registrant whose objections to war were based, not upon religious training and belief, but upon his own philosophical views and personal moral code. In *Berman* the court decided (p. 382) that the phrase "religious training and belief"

must be regarded as a "definite limitation on the scope of the exemption and cannot be deprived of its effectiveness by specious reasoning that something which to its user is more acceptable than some other thing is therefore the same thing." Thereafter Congress clarified its intention by adding to the 1948 Act the clause referring to belief in a Supreme Being. It was stated in S. Rep. No. 1268, 80th Congress, 2d Sess., 1948, p. 14, that the provision as to conscientious objectors "reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 act * * * (See *United States* v. *Berman,* 156 F. 2d 377 [C.A. 9], certiorari denied, 329 U. S. 795). * * *"

Petitioner argues that the mere assertion that he was a conscientious objector gave him an absolute right to have his claim determined by the full course of the Selective Service administrative appeal procedures of Section 6(j) without any "short-circuiting" or "directed verdicts" by the judiciary (Pet. 9, 11). But the law obviously does not require a wholly vain procedure. If a registrant makes no claim cognizable under the statute, the statute does not apply to him. For a registrant to be entitled to the special appellate procedures of Section 6(j) he must, at the very least, make an initial assertion in his Selective Service papers that his conscientious objection to war stems from religious training and a belief in a Supreme Being. He has then made a claim for exemption, which may or may not be upheld as the procedures specified in Section 6(j) are set in motion. If the registrant, however, makes no preliminary assertion

as to religious training and belief in a Supreme Being—or, as the petitioner here, disclaims these in unequivocal terms—he has failed to make a claim for exemption as a conscientious objector within the terms of Section 6(j). Petitioner was not judicially "short-circuited" and deprived of the special appellate procedures under Section 6(j), since he had never made a claim which came within the purview of that statute.

This case is similar to *United States* v. *De Lime*, 121 F. Supp. 750 (D.N.J.), affirmed, 223 F. 2d 96 (C.A. 3), where the defendant's uncontradicted statements disclosed that he was an agnostic, and that his claim was not based on "religious training and belief" within the meaning of the statute. It was there held that he was not prejudiced by failure to receive an adequate or fair resumé of the F.B.I. report, the court stating that "if everything he had said in support of his claim for exemption was fully believed his position continued to lie entirely outside of the statute" (223 F. 2d at 100). So too in the instant case, petitioner's purported claim was completely outside the purview of the statute. [2]

[2] Petitioner's strong reliance (Pet. 12) upon *Sterrett* v. *United States*, 216 F. 2d 659 (C.A. 9) is misplaced, since an entirely different factual situation was involved. In *Sterrett* there was no indication whatever that the defendants' claims for conscientious objector classifications were improper *ab initio* by reason of statements expressly negativing religious training and belief in a Supreme Being. The decision was narrow in scope and predicated upon the language of the regulations at that time, it being held that the registrants could not be denied a Department of Justice hearing after they had been given conscientious objector classifications by the local board, had appealed claiming minister classifications, and had then been classified I-A by the appeal board.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1955.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955